EX PARTE

EX PARTE OR LATE FILED

United States Telephone Association

1401 H Street, N.W., Suite 600
Washington, D.C. 20005-2136
(202) 326-7300
(202) 326-7333 FAX

DOCKET FILE COPY ORIGINAL

February 22, 1995

RECEIVED
FEB 22 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

94-1

Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Dear Chairman Hundt,

The local exchange carriers have shown that a properly structured price cap plan provides strong incentives to invest in the network infrastructure, to introduce new services' and to act innovatively to meet customer needs. In this docket, the Price Cap LECs stated their intention to substantially increase their infrastructure investment under a sound federal regulatory framework.[1]

The facts certainly confirm the credibility of the LECs' commitment. Even though shortcomings in the current plan dampen investment incentives, the Price Cap LECs invested an additional $3.5 billion in the first three years of the plan. And these same local exchange carriers account for 75% of <u>all</u> of the investment made in the U.S. telecommunications sector.

Despite the solid track record of the Price Cap LECs, opponents in this proceeding have called into question the strength of our investment commitment. At the same time, you and the other members of the Commission have been constant and articulate advocates for our nation's school children and the need to ensure that they benefit from the telecommunications revolution. Today, USTA presents a proposal that responds to the Commission's education challenge -- and dramatically demonstrates that the LEC investment commitment is real.

You know that USTA has proposed a new option to be added to the current LEC price cap plan. In a January 18 filing, USTA described the integrated features of that option. In order to ensure that our access customers immediately benefit

DOCKET FILE COPY ORIGINAL

[1]<u>See</u>, <u>e.g.</u>, Price Cap Reform, Financial Incentives and Exchange Carrier Investment: Statement of Dr. Larry F. Darby in support of USTA's Comments in the LEC Price Cap Review Proceeding at p. 2, filed May 9, 1994 in CC Docket 94-1.

No. of Copies rec'd 0+1
List A B C D E

order to ensure that our access customers immediately benefit from it, companies that choose the new option will reduce their Price Cap Indices by 1% and institute a Consumer Productivity Dividend that begins at 1% and gradually phases out. In addition, a moving average productivity offset would ensure that 100% of the LECs' productivity gains are passed through to access customers. This USTA plan also increases the momentum toward a competitive marketplace, and provides the LECs with investment incentives. It is clearly in the public interest and should be adopted.

USTA now suggests a voluntary feature to reassure the FCC and all those concerned about education that there is substance behind our words about investment. By this feature, a LEC may choose to make a voluntary contribution equal to 1% of its annual interstate revenues into an eduction fund every year for three years. The fund could be used by schools to obtain interconnection to the National Information Infrastructure or to further develop their NII capabilities. Purchases could be made from any firm subject to the FCC's jurisdiction, whether a carrier or equipment provider. Schools would be able to choose based on their individual needs. There would be no requirement to use any particular technology or service provider.

In a short attachment, USTA shares some ideas -- for discussion purposes -- on the administration and distribution of the fund. But we believe that the Education Coalition that has been active in this docket and the members of the Education Task Force at the FCC are the vital participants in shaping these details. This fund avoids many of the controversies generated by education proposals made previously in this docket because it would be completely outside of the FCC's price cap mechanisms. No benefits or choices would be granted or denied by the FCC to any LEC because it chooses to make, or not to make, a voluntary contribution.

USTA views this fund as a way to "kick start" some of the efforts you and your fellow Commissioners have outlined in your public statements. Looking beyond the three years, however, we believe it is the responsibility of the <u>entire</u> communications industry -- and of the government -- to continue the momentum.

USTA presents this proposal after much internal debate and disagreement among our member companies. (Indeed, a few remain convinced that it is unwise public policy for the LECs to shoulder a disproportionate share of this responsibility and so believe the issue might best be examined in some other proceeding.) We also know there will be those who will criticize the plan because it is presented in the price cap proceeding, and as part of USTA's overall position in that docket. Let me share two helpful points on that subject that emerged in our own discussions.

First, USTA's January 18 proposal can and does stand on its own. The record in this proceeding demonstrates that ours is a principled proposal that is supported by the evidence and is in the public interest. Second, the days are gone (if they ever existed) when our companies could make the kind of significant commitment we make today with no regard to the terms of the regulation under which the commitment will have to be fulfilled. Indeed, our shareholders rightfully demand that we make such commitments only under circumstances where we have a meaningful opportunity to realize long-term benefits. Unlike our own proposal, the price cap plan our opponents advocate here presents no such opportunity for us.

We met yesterday with representatives from the Education Coalition and their initial reaction to our proposal is positive. The coalition will be making a filing on this matter to express their views to you in detail. I look forward to working with the Commission, your staff, the Education Coalition, and other interested parties on this exciting initiative for our children.

Sincerely,

Roy M. Neel
President & CEO

cc: Commissioner Barrett
Commissioner Chong
Commissioner Ness
Commissioner Quello

USTA PROPOSAL: A FEATURE TO IMPROVE COMMUNICATIONS CAPABILITIES OF EDUCATIONAL INSTITUTIONS
CC DOCKET NO 94-1 (EX PARTE FILING)

OVERVIEW

In the NPRM, the commission asked for comment on whether and how the commission should revise the LEC price cap rules to support the development of an advanced telecommunications infrastructure capable of providing needed telecommunications services for education.[1] In response, several parties filed comments recommending that the Consumer Productivity Dividend (CPD) be redirected to fund infrastructure improvements for the nations's schools and libraries.[2] USTA has built upon the comments of the Education Coalition and CCIA in submitting the following proposal.

The proposal is responsive to a growing recognition within the FCC and the Administration that one class of users -- those involved in the educational system -- need substantial attention and assistance. It is specifically responsive to the need for connection to the Information Superhighway for schools and libraries through the provision of inside wiring, wireless equipment where inside wiring may not be possible, etc. This proposal will expedite more innovative and direct investment in the communications capabilities of educational institutions, advancing the policy goals of the FCC and the Administration. Following is a synopsis of the amount of the fund, general parameters for its operation, and, briefly, the basis for the Commission's legal authority to establish such a fund.

AMOUNT OF THE FUND

The amount of the fund is to be established at 1% of interstate revenues each year for three years for each company electing the optional price cap plan without a sharing component. At the end of three years, the fund would phase out. Assuming all of the price cap LECs participate, the fund might initially be established at $200 million, growing to a total of $600 million over three years.[3] Current rates and price caps indices would not be affected by this education proposal. Funding would be made out of stockholder equity.

---

[1] Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 1657, at para. 36 (1994)

[2] See Comments of the American Library Association, the Council of Chief State School Officers, The National Association of Secondary School Principals, the National Education Association, and the National School Boards Association ("Education Coalition"); Comments of the Computer and Communications Industry Association (CCIA); Reply Comments of Bell Atlantic

[3] Based on 1994 revenue estimates of the individual price cap LECs, the range of contributions by each LEC would be from $320,000 to $32 million on an annual basis.

OPERATION OF THE FUND

The FCC would create and oversee the operation of a Board to administer the fund on a technology neutral & competitively neutral basis.[4] At a minimum, the Board would certify applicants and make funds available to eligible applicants. Application to the Board for funding of specific programs would be made through the appropriate state educational body/department. Eligible applicants would be K-12 schools and libraries. LECs choosing the new option would immediately begin transfers to the fund, whether or not all details for the administration of the plan are finalized. The funds could be used by applicants to obtain services and equipment from any provider subject to FCC jurisdiction, thus appropriately limiting the expenditure of funds to communications purposes.

A basic criterion for a project might be that it would contribute directly to the development of, or connection to, the NII or serve as a pilot program for such development/connection on a one-time basis. Applicants would be free to select any provider approved by the fund. If an educational institution chooses a contributing LEC as the provider, the institution would apply credits to the service or equipment obtained from the LEC. A mechanism would be developed so that if the institution chooses a different provider, that provider would get compensated from the fund. In order to balance the state and national goals of improving education, there would be a preference for eligible institutions to use the funds in the states where they are provided by LECs.

PUBLIC BENEFITS

The USTA education initiative promises to "jump start" an important element of society -- our educational institutions that market forces alone have not brought onto the Information Superhighway. The plan is designed to be flexible, allowing state and local education authorities to use the funds generated by this initiative to meet their most pressing needs for upgrading their communications infrastructure -- whether that be broadband capabilities needed for distance learning, ISDN access to the Internet, or wiring a telephone in classrooms.

---

[4] This addresses the concern raised by IDCMA that the initiative would give LECs an anticompetitive advantage in marketing to educational institutions.

LEGAL AUTHORITY

Improving the availability of communication service to U.S. educational institutions and their students is a goal squarely within the public interest mandate of Section 1 of the Communications Act. A voluntary education funding feature of the optional price cap plan is a reasonable and lawful way for the FCC to address this important objective.[5] Because participation in the fund would be voluntary, it would not constitute a taking of property. This education funding feature would have no direct effect on the LECs' interstate access rates.

[5] A comprehensive legal analysis of a similar mechanism was submitted in an ex parte submission from Ginsburg, Feldman & Bress to William F. Canton dated November 21, 1994.